



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11971158

Date: FEB. 1, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a dentist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements through either receipt of a major, internationally recognized award or by meeting at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a dentist who at the time of filing was the Director of the [REDACTED] [REDACTED] Research Center at [REDACTED] University [REDACTED] in China, as well as the Deputy Director of the [REDACTED] Department in the university's school and hospital of stomatology. He states that he intends to continue his education in the United States, as well as "increase the communication between Chinese and American dental [REDACTED] research" and "further develop the [REDACTED] industry in the U.S."

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his participation as a judge of the work of others and his authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets six additional evidentiary criteria. After reviewing all of the evidence in the record, we agree with the Director regarding the criteria relating to the Petitioner's judging and authorship activities, but find that he does not meet the initial evidence requirements of this classification.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

As indicated in the plain language of this criterion, a petitioner must submit evidence to show that he has received a prize or award, that the award was granted to acknowledge his excellence in the field of endeavor, and that the award is nationally or internally recognized. Here, the Petitioner submitted evidence pertaining to the following awards:

- Silver Medalist, [REDACTED] East China [REDACTED] Debate Competition (2017), Representative Team of School of Stomatology, [REDACTED] University,

- Second Prize, [redacted] [redacted] Debate Competition (2018), School and Hospital of Stomatology, [redacted] University,
- Third Prize, 2017 [redacted] Science and Technology Awards, School and Hospital of Stomatology, [redacted] University
- Third Prize, 2018 [redacted] Science and Technology Progress Awards, [redacted] Stomatological Hospital, [redacted] University
- Copper Prize, The [redacted] Innovates the Achievement Exposition (2007)
- Excellent Paper of Conference Award, 2007 [redacted] Chinese Seminar

Turning to the first element of this criterion, we note that the Petitioner was not an individual recipient of the first two awards listed. Articles in the record which were retrieved from the [redacted] web portal as well as what appears to be the [redacted] website indicate that the Petitioner was the team leader for the university at the debate competitions, and photographs show him accepting the certificate along with the four other team members. However, neither of the debate competition certificates name him as a recipient. We therefore find that he did not receive these awards.

Although the evidence relating to the science and technology awards also lists the recipients by institution name, the names of the individual research team members are also included, and therefore shows that those individuals were recognized by the awarding organization. In addition, the last two certificates specifically name the Petitioner as the only recipient. These awards can therefore be considered to have been received by him.

As for the second element of this criterion, the evidence regarding the debate competitions indicates that the prizes were awarded based in large part upon debate skill rather than excellence in the field of dentistry. For instance, an article posted on the [redacted] portal regarding the [redacted] competition describes the topics being debated, which involve the choice between two dental procedures, but in detailing the results provides comments about the debating skill and tactics of the teams, such as noting that one set of debaters “were agile, strong, and had strong thinking ability,” while another debate was “full of witty words,” and yet another participant sang a song for comedic effect.

The evidence relating to the 2017 [redacted] Science and Technology Award and the 2018 [redacted] Science and Technology Award is sufficient to show that they were awarded for excellence in the field, as they are based upon contributions already made by the teams and individuals. However, the record does not include information regarding the criteria used in awarding the last two awards listed, or any other evidence which would support a finding that they were awarded based upon excellence in dentistry. We note that the term “excellent” used for the seminar award is not sufficient, by itself, to meet this element of the criterion.

Finally, looking at the third element of this criterion, the record does not include evidence that the research grant awards, which are the only two awards meeting both of the first two elements, are nationally or internationally recognized. The notification for the 2017 [redacted] Science and Technology Awards was posted on the website of the issuing organization, the [redacted] Medical Association, and the internet search results submitted by the Petitioner do not show that recognition

of these awards went beyond the provincial level. Similarly, the evidence of information about the 2018 [] Science and Technology Progress Awards posted on a web portal is not sufficient to demonstrate that these awards received national or international recognition in the field of dentistry.

For all of the reasons discussed above, we find that the Petitioner does not meet this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner submitted evidence of his membership in the following associations:

- Chinese Stomatological Association (CSA), Member of Fifth Special Committee for [] (2015-18), Standing Member of Sixth Special Committee for [] (2018-21)
- [] Stomatological Association [], Standing Member of First Specialized Committee for [] (2006-10), Vice Chairman of Second and Third Specialized Committees for [] (2011-19), Standing Member of First Specialized Committee for [] Dentistry (2015-19), Executive Director of Fourth Council
- Chinese Medical Association of Medical Information (CMAMI), Standing Member of Seventh Council (2015)
- Chinese Medical Association (CMA), [] Branch, Member of Third Committee of Specialty for Stomatology
- [] Medical Association [], Stomatology Branch, Standing Member of Fourth Committee

Regarding the Petitioner's membership in the CSA, he asserts on appeal that standing members of the committee "must have recognized important contributions" and "are all experts with outstanding expertise," and refers to a letter submitted in response to the Director's RFE. That letter, from [] the President of the [] and President of the School of Stomatology at [] states that there are 53 standing members of the Special Committee for [] and that they must have "recognized important contributions in the field of oral []." [] also writes that this membership must be voted unanimously by all association members, and that all standing members of the committee are "renowned professional experts in the field of Chinese oral []." However, we note that [] does not specify what contributions the Petitioner made that were considered sufficiently important to justify his selection as a standing member of the committee, nor does the record include a copy of the CSA's official rules regarding membership. An article from what appears to be the website of the school of stomatology at [] notes that the members of the committee conducted a secret ballot to elect standing members and officers of the committee, including both [] and the Petitioner, but does not shed light upon the criteria employed by the members in casting their votes. Therefore the evidence does not sufficiently establish that the Petitioner's status as a standing member of one of the CSA's 34 committees meets this criterion.

[]'s letter also addresses the Petitioner's status as Vice Chairman (and after the filing of this petition, Chairman) of the []'s Specialized Committee for []. He writes that all

members of this committee are “excellent researchers,” and that the Petitioner was elected as Chairman due to his “excellent performance and achievements.” Although he notes that the Petitioner successfully performed his duties as Vice Chairman of the committee, [REDACTED] again does not identify any outstanding achievements that led to his appointment as Vice Chairman and Chairman. In addition, the evidence includes a copy of the [REDACTED] articles of association. Although the articles specify that senior officers of the association must “have great influence in the business field of the association,” they do not include any requirements for leadership of the committees. In addition, the articles state that individual members must be engaged in stomatology and relevant professions. This evidence does not show that the [REDACTED] requires outstanding achievements of its members, or applies a higher standard of membership including outstanding achievements for leaders of its committees.

The last of the Petitioner’s memberships that he addresses on appeal is his status as a member in the CMA. Although we agree that, per the articles of association, the payment of membership dues is not a condition for acceptance into the CMA, the articles do not otherwise show that outstanding achievements are required. Notably, ordinary members must hold one of several positions in the medical field, have graduated from a medical institution of higher education, and obtained a practicing license. As these requirements are the minimum for entering into a medical profession, they do not constitute outstanding achievements.

Although the Petitioner does not challenge the Director’s decision regarding his membership in the remaining associations on appeal, we have reviewed the evidence regarding those memberships and agree with the Director. The Petitioner has not established that his level of membership in any of these associations requires outstanding achievements, and we conclude that he therefore does not meet this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

In order to meet the requirements of this criterion, a petitioner must show that material is about them, that it relates to their work in the field, and that it was published in one of the qualifying types of media. Here, the evidence submitted falls into several different categories. The first type to be considered is a screenshot of a video posted on [REDACTED] which shows the Petitioner. The accompanying translation identifies the Petitioner and lists his credentials, and includes what would appear to be the first spoken sentence in the video in which he introduces himself. However, although the video is described as an interview, a transcript of the video was not submitted, so the evidence does not indicate that the Petitioner was interviewed or, if he was interviewed, that the interview was about him and his work as a dentist. The evidence is therefore insufficient to show that this material is about the Petitioner and his work in the field of dentistry. In addition, while we acknowledge that the Petitioner submitted evidence regarding the popularity of [REDACTED] as a platform, he has not demonstrated that every video posted on the platform, regardless of the person or organization that posted it, should be considered to have been published in a major medium.

Another type of material submitted by the Petitioner is what appear to be advertisements. One example is a copy of an article published in a newspaper called *Health News* which lists his achievements and

credentials and then includes his office address, telephone number and hours. Another example, published on the [] web portal, is a lengthy interview and case summary for one of the Petitioner's patients. At the end of this material, it is stated that the editor is "propaganda team of stomatological hospital," and the address and other contact information for the hospital is provided. However, marketing materials created for the purpose of promoting a petitioner's services are not generally considered to be published material about the petitioner.¹

The record also includes two newspaper articles including the same photograph, which the Petitioner asserts were published in [] *Daily* and [] *Evening News*. However, neither of these newspaper clippings include identification of the publication, nor do they include the date of publication as required. Further, the Petitioner is not identified in the first article, and both accompanying articles are about the visit of a French technical advisor, not the Petitioner and his work.

One article which is about the Petitioner and his work was published in [] *Railway Newspaper* [] 1998. But the Petitioner did not provide circulation information for this newspaper, and did not otherwise claim or establish that it is one of the qualifying types of media.

Upon review of all of the evidence submitted in support of this criterion, including the material specifically mentioned above, we find that the Petitioner has not established that he meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, a petitioner must establish that not only have they made original contributions, but that those contributions have been of major significance in the field. For example, a petitioner may show that the original contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

Here, the Petitioner submitted evidence that he is named as an inventor on nine utility patents granted by the Chinese National Intellectual Property Administration. In addition, he submitted certificates from several hospitals and medical device manufacturers regarding the production and use of devices based upon these patents. Specifically, certificates were initially submitted from [] Union Hospital and the First Hospital of [] stating that each of these institutions have used devices based on three of the Petitioner's patents. However, we note that all of these certificates use the exact same format, and all include nearly identical language despite coming from separate hospitals. Specifically, the last sentence of each certificate varies only slightly, suggesting that the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489

¹ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*. (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

This is also the case with additional certificates submitted in response to the Director's RFE. For example, the last sentence of the certificates from [redacted] and [redacted] Hospital regarding the production and use of a physiotherapy instrument are identical. Because these certificates are identical in format and share identical or nearly identical language, it is reasonable to infer that the Petitioner is the common source of this evidence, thus significantly reducing their evidentiary value.

In addition, even if we were to consider the content of these certificates as entirely valid, they do not establish that the Petitioner has made a major contribution to the field of dentistry. Although they indicate that adoption of these devices has taken place in hospitals beyond [redacted], most of these hospitals are in the same province of [redacted] as [redacted] including [redacted] Medical University, First Hospital of [redacted] and [redacted] Municipal Hospital. In addition, the certificates from the manufacturers indicate that they have been produced in what appear to be limited numbers, including 200 units of the physiotherapy instrument and 700 units of a [redacted]. Although the producers assert that that the [redacted] has been "applied in hundreds of domestic hospitals and clinics" and that an ice and heat compress mask has "sold quite well in hospitals and clinics nationwide," the evidence is insufficient to show that the apparently low number of units produced supports these assertions. Further, the record does not include evidence to support that this level of adoption by some hospitals in China demonstrates wide implementation throughout the field or a remarkable impact.

We also note that the certificates do not indicate that the introduction and use of these devices has resulted in a significant contribution to dental care or the field of dentistry. Several of the certificates state that the use of these devices has "benefitted a lot of patients" and "can save operation time and improve efficiency," and they generally indicate satisfaction with the devices. However, while some of the certificates describe the construction and operation of the devices in detail, none specifically indicate the scope of their impact upon patient care.

Reference letters submitted by the Petitioner also discuss his patents and their contributions to the field. For instance, [redacted] of the [redacted] University School of Dentistry (Japan) describes the construction and operation of a [redacted] (described as a [redacted] on the patent certificate) which the Petitioner helped to invent, and states that "the [redacted] efficiency is improved and the injuries to the patient is reduced." As with the statements provided in the certificates, [redacted]'s description does not provide sufficient detail to demonstrate that this device has been a contribution of major significance to the field.

The Petitioner also focuses in his appeal brief on the contribution he made to a cooperative research project with Australian researchers on the effects of hyperbaric oxygen on [redacted] tissue. He refers to two reference letters in support of the major impact of this research. [redacted] of the [redacted] University Institute of Stomatology states that this research "has released many valuable academic papers," but mentions only one paper co-authored by the Petitioner. [redacted] also mentions this project and states that its contribution "can be showed by the scientific fee of more than CYN 500,000." However, he does not explain the correlation between the amount of funding granted

for this research and the significance its outcome has had on the field of dentistry, and neither letter provides detail concerning the project's results and subsequent impact.

Although the Petitioner has shown that he has made original contributions to his field through his inventions and research, the evidence submitted and analyzed above does not establish that he those contributions have been of major significance. Therefore, he does not meet this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

In general, a leading role should be apparent by its position in the overall hierarchy of an organization and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The evidence shows that the Petitioner has served as the Director of the [redacted] Research Center [redacted] of [redacted] since 2013, as well as Deputy Director of the [redacted] Department in the School and Hospital of Stomatology. On appeal, the Petitioner highlights the letter from [redacted], who is the President of [redacted]'s School of Stomatology. [redacted] states that in the two roles held by the Petitioner, he "lead[s] the clinical work and research of two departments." He also states that the Petitioner is "a well-known expert in [redacted] in China" and among "China's first batch of doctors and researchers of [redacted]." In addition, [redacted] writes that the Petitioner was appointed as the Director of the [redacted] Teaching and Research Office, in which role he leads "the various levels of [redacted] and students' cultivation work" in the School of Stomatology.

Although [redacted]'s letter provides little detail regarding the Petitioner's duties, it sufficiently indicates that he serves in a leading role for the [redacted] as well as the [redacted] Department. However, as noted by the Director in his decision, this reference letter and others in the record do not indicate where his position fits into the overall hierarchy at [redacted], or even within the School of Stomatology and Affiliated Stomatological Hospital. Evidence which appears to be from the [redacted] website indicates that the hospital has 14 clinical departments and 7 administrative departments, and the evidence concerning the Petitioner's leadership of one or two of those departments is not sufficient to establish that it is leading or critical for the entire hospital. Further, the record does not include evidence which establishes that [redacted] or the [redacted] Department by themselves have distinguished reputations.

The website evidence also verifies statements in several of the reference letters that the Petitioner's employing hospital is the only specialized stomatological hospital in [redacted] province. Another page from the website states that the hospital's "research conditions have been improved," and that it "ranks high in Periodontology and [redacted]," but it does not include a reference or further information about the ranking to support this latter statement. This evidence does not therefore establish that [redacted]'s School of Stomatology and Affiliated Stomatological Hospital have a distinguished reputation amongst similar hospitals in China or in the dentistry field overall.

Per the above, we conclude that the evidence does not establish that the Petitioner meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

In support of this criterion, the Petitioner submitted tax documents for the years 2016 through 2018 that show that he earned “income from salary and wages” of RMB 449,706 and RMB 616,628 in the first two years, respectively, and that his monthly “normal salary and wages” in 2018 totaled RMB 542,606. In addition, he earned bonuses of RMB 11,000 in 2016 and RMB 108,000 in 2017 and 2018.

For purposes of comparison to the salary of others in his field, the Petitioner submitted a salary survey from the website www.kanzhun.com. This material indicates that the position surveyed is dentist, that the figures are based upon “124 items of salary,” and that the average salary of RMB 5949 is expressed in pre-tax yuan per month. However, average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Rather, the petitioner must submit documentary evidence of the earnings of those in his/her occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, although he works in the field of dentistry, the Petitioner’s position as a department head with [redacted]’s dentistry school and hospital is not comparable to that of a dentist. The partial list of positions, locations and salaries included with the submitted salary survey evidence verifies that the salaries included in the survey are dentists, and there is no indication that these positions share the same duties or level of responsibility as the Petitioner’s position.

In addition, based upon the partial list referenced above, these positions are located throughout China, and therefore do not provide an accurate basis for comparison to the Petitioner’s salary, which is based upon conditions in [redacted]. The evidence includes a note to this effect, stating that “[S]alary level is affected by many factors, such as region, working years, and etc. For reference only.”

Because the Petitioner has not submitted evidence to establish that his salary is high in relation to comparable positions within his geographical area, we conclude that he does not meet this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a

“career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.